REMARKS

Claims 1-21 and 32-45 are pending in this application. Claims 37 and 39 are amended herein to be in independent form. Claims 1, 15, 37, 39 and 44 are independent.

The Examiner asserts that claims 1-2, 7, 15, 19 and 44 were amended in the response filed on September 28, 2001 to overcome the rejection. The Examiner apparently reaches this conclusion based on the substitution of "image data" for "data" in the amended claims.

However, each of these claims requires limitations on the resolution of the data. As, for example, defined in the *American Heritage College Dictionary*, 3rd Edition (Houghton, Mifflin Company, Copyright 1997, 1993) resolution is defined as "the fineness of detail that can be distinguished in an image, as on a television." Further, the term "data" must be construed in light of the specification which explicitly discloses that the recited resolution limitations relate to image data.

It is further respectfully submitted that in the context of the claim language prior to amendment, those skilled in the art would clearly have understood that the required data is image data. Indeed, the Examiner's statements in the Final Official Action acknowledge the Examiner's prior incorrect construction of the term "data" and it would accordingly appear that the

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clarification accomplished its intended purpose of assisting in the Examiner's understanding of the claim language.

Accordingly, it is again respectfully submitted that the amendments made in the prior response filed on September 28, 2001 to claims 1-2, 7, 15, 19 and 44 are made solely for clarification and not to overcome any rejection.

All claims other than claims 37 and 39 stand rejected under either USC §102 or USC §103.

Prior to addressing the substance of the rejections, it is respectfully submitted that the finality of the rejections is improper. As the Examiner is well aware, this application has been in prosecution for over four years. The case history reflects the fact that the Examiner had previously issued a final Office Action rejecting all claims, which was subsequently withdrawn on the basis of an Appeal Brief filed by applicants' representative. Subsequent to the withdrawal of the first final Official Action, the Examiner issued a further non-final Official Action rejecting all claims, which were rebutted in the traversal arguments submitted by applicants' representative in response. Now, the Examiner states on page 2 of the Official Action that the rebuttal arguments with respect to claims 1-21 and 32-45 are moot in view of still new grounds of rejection. The Examiner goes on to assert new combinations of art of record in this case since April 2000 in support of this most recent final rejection of the claims.

The history of the present prosecution shows that the Examiner has persistently changed his position with respect to the rejection of claims. A "clear issue" has never been reached

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with respect to the rejection of various claims, since the Examiner has applied and withdrawn various prior art references and combinations of references throughout the prosecution history. MPEP Section 706.07 clearly requires that "before final rejection is in order, a clear issue should be developed between the examiner and applicant." Indeed, the Manual states that "switching...from one set of references to another by the examiner in rejecting in successive Actions claims of substantially the same subject matter, will...tend to defeat attaining the" goal of reaching a "clearly defined issue for an early termination." In the present instance, the Examiner's "switching...from one set of references to another" has thus defeated the stated goal of reaching a clearly defined issue.

Indeed, by making the action of December 20, 2001 final, applicants are clearly not provided with the "cooperation of the Examiner" required by MPEP Section 706.07 defining the invention by claims that will give applicants the patent protection to which they are "justly entitled." The application of constantly changing the basis for rejection has placed applicants in a position of responding first to one point and then to another without reaching a clear issue.

MPEP Section 706.07(a) specifically instructs an Examiner that second or subsequent office actions shall be final "except where the examiner introduces a new ground of rejection not necessitated by amendment of the application by applicant, whether or not the prior art is already of record." In the present instance, although the applied art has been of record throughout the substantive examination, certain rejections thereunder have been already withdrawn on the basis of a prior Appeal Brief and others assert new combinations which constitute

"new grounds" of rejection. The mere fact that claims have been amended does not, in and of itself, justify changing the grounds of rejection. Thus, MPEP Section 706.07(a) gives one example of an amendment which does not justify changing of the grounds. Specifically, amendment to overcome a rejection under USC §112 is reasonably expected to lead to modification of the claims. In the present instance, the amendment to the independent claims did not change the scope of the claims in response to the previous Official Action, but instead, presented a clarification because the Examiner apparently misunderstood the claim language. Thus, these amendments merely presented the contents of the previously-pending independent claims in a more understandable fashion for the Examiner's benefit.

Had the Examiner responded by providing reasonably understandable arguments rebutting the traversal arguments presented in response to the prior non-final Official Action and maintained the rejection of the claims on the same basis as previously asserted, an issue would have been reached and applicants would have been in a position to appeal. However, the Examiner instead choose to introduce new grounds for rejection.

Claims 1, 2 and 15 stand rejected under 35 USC §103(a) as obvious over the newly applied combination of Coiner (U.S. Patent No. 5,638,273) in view of Nishijima (U.S. Patent No. 5,915,069). Claim 3 stands rejected under 35 USC §103(a) as obvious over Coiner et al. (U.S. Patent No. 5,638,273) in view of Nishijima and Yamawaki (U.S. Patent NO. 5,446,659). Claims 1-2, 4-8, 10-12, 15-19, 36 and 38 stand rejected under 35 USC §102(e) as anticipated by Nishijima. Claims 9, 20-21,32-35 and 40-43 stand rejected under 35 USC §102(a) as obvious over

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Nishijima. Claims 13-14 stand rejected under 35 USC §103(a) as obvious over Nishijima in view of Freeman (U.S. Patent No. 6,002,808) and Chow (U.S. Patent No. 5,016,633). Claims 1-4, 15 and 44-45 stand rejected under 35 USC §103(a) as obvious over Gustin (U.S. Patent No. 5,056,056) in view of Nishijima. The rejections are respectfully traversed.

The arguments submitted in the prior response to earlier Official Actions (including those presented in the previously-submitted Appeal Brief) are hereby incorporated by reference in their entirety to the extent they address any of the currently applied prior art.

As discussed in the prior responses, claim 1 requires a control processor operative to store image data in the memory. Each image represented by the stored image data associated with a portion of the time closer to an event has a first image resolution and each image represented by the stored data associated with a portion of the time period further from the event and has a second resolution, different than the first image resolution. The Examiner points to Coiner has disclosing the required control processor referencing column 1, line 66 to column 2, line 5, and column 2, line 55 to column 3, line 7 in support of the rejection.

However, the referenced text indicates that the frequency at which Coiner's non-image data is stored may be different dependent upon whether or not the storage occurs during normal operational conditions or during the time surrounding an incident or triggered event. Although Coiner characterizes this in column 2, lines 57-60, as a resolution change, the resolution has nothing to do with image resolution which is the fineness of

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detail of an image, but rather, with frequency over time at which data is sampled.

Hence, as previously noted in a prior a response, according to Coiner, while the temperature is normal the periodicity or frequency at which temperature data is stored could be set at twelve seconds. The periodicity or frequency at which the data is stored could then be increased to fewer than twelve seconds when the temperature exceeds a particular threshold. However, in either case, all of the sampled data at the particular time interval, be it twelve seconds or less than twelve seconds, is stored.

Accordingly, even if one were motivated to attempt to adapt Coiner's teaching to image data (which is entirely unmotivated by the applied art) and could somehow determine how to modify the components of Coiner's non-image system to sense and record image data (it being entirely unclear as to how this could be accomplished), this would, at best, result in a system which modifies the periodicity or frequency at which images are sensed, but would not in any way result in different resolution images being stored.

Further still, in view of the Examiner's acknowledgement that Coiner lacks any teaching or suggestion that the disclosed system is adapted for use with image data, the Examiner proposes to modify Coiner based upon the teaching of Nishijima, to make obvious the claim 1 invention. However, as noted above, there is nothing to suggest in either the video signal recording technique disclosed by Nishijima or the non-image data recoding technique disclosed by Coiner to motivate the proposed modifications or combination.

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The Examiner contends that such a combination and modification would be motivated to "provide an added perspective to data analysis with the benefit of video analysis for more accurate assessment, especially for video data-type applications." However, Coiner does not suggest a need for "video data-type applications."

Further, Nishijima also fails to teach or suggest storing image data at different resolutions. Rather, as discussed in detail in the prior responses, and as summarized by Nishijima in column 9, line 64 through column 10, line 38, Nishijima discloses compressing video data at different compression rates to extend the recording time of a standard length magnetic tape or other recording medium. This has nothing whatsoever to do with storing image data at different resolutions. Rather, as discussed in the referenced text, due to the compression technique, it is not necessary to intermittently record the video signal to extend the recording time of the magnetic tape and, thus, continuous recording can be utilized throughout the entire recording process to ensure that every moment of the surveillance is recorded at the same frame rate to provide a recorded video signal that is useful for inspection for viewing and/or processing purposes. If continuous recording is not needed during particular instances, intermittent recording can also be selected to further extend the recording length of the recording medium.

Nishijima goes on to disclose in the referenced text that although changing a quantization table to vary the compression ratio at which a video signal is compressed is discussed, other techniques such as intraframe/interframe encoding techniques may

be utilized in place of the quantization cable technique to
perform the compression.   It is perhaps worth highlighting that
Nishijima does not in any way suggest that the selected
compression rate or technique will effect the ultimate
resolution of the image.

Gustin discloses a system for sensing various operational
parameters and is similar to the above-discussed Coiner
reference.   As discussed in the prior responses, Gustin is
directed to sensing non-image data (such as pressure or
acceleration data).   As discussed in column 4, lines 9-60, as
with Coiner, the data acquisition rate may be adjusted so that
the sensed and stored pressures or accelerations have a variable
periodicity or frequency.   Also like Coiner, Gustin stores all
of the data, such as the pressure or acceleration data, that is
acquired at the applicable frequency of periodicity.

Hence, even if the combination of Gustin and Nishijima were
motivated (which it is respectfully submitted is not the case),
and could somehow be construed to suggest how one might modify
the non-image data system of Gustin to address image data (which
it is respectfully submitted is also not the case), the proposed
combination would at best result in a system which varies the
acquisition rate (e.g., the rate at which the sensing is
performed) and, hence, at which the data is acquired and stored,
and would not result in a system capable of storing image data
at different image resolutions.

Claim 15 requires the storage of first image data associated
with the time period closer to an event which has a first image
resolution and second image data associated with a time period
further from the event which has a second image resolution

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different than the first image resolution. It is respectfully submitted that the applied art whether taken individually or in any combination lacks any teaching of such storage of different image resolution data for reasons which should be clear from the above.

Claim 44 recites a processor operative to receive a signal representing an event and to store image data such that each image represented by the stored data associated with a portion of the time period after receipt of the event signal has a first image resolution and each image represented by the stored data associated with a portion of the time prior to receipt of the event signal has a second image resolution lower than the first image resolution. Here again, the above-referenced prior art whether taken individually or in combination lacks any teaching or suggestion of such a processor as should be clear from the above-discussion.

It should further be noted that other recited features independently distinguish over the applied prior art. Numerous points of distinction have been previously discussed in detail in previously-submitted responses, which are incorporated herein by reference, relating to the applied prior art.

Referring now to the Examiner's Remarks beginning on page 5 of the final Official Action, the Examiner asserts that the remarks submitted in the prior response relating to the non-correspondence between varying image resolutions and varying compression rates "has nothing to do with the merits of independent claims 1, 15 and 44."

On the contrary, it is respectfully submitted that in four years of prosecution the Examiner has yet to identify any art which suggests, let alone teaches, that a variation in the compression rate will result in a variation of image resolution. In fact, Nishijima does not in any way suggest a variation of resolution. Rather, Nishijima explicitly discloses that the variations can be accomplished using any conventional encoding technique, including intraframe/interframe encoding.

Hence, the fact that Nishijima's varying of the compression rate does not correspond to the varying of the image resolution of image data which is stored is clearly relevant to the merits of the independent claims. It is further noted that the detailed discussion of a preferred technique disclosed in the present application to obtain image data having different image resolutions was merely provided to aid in the Examiner's understanding of this distinction. The Examiner's contention that column 4, lines 39-60, of Nishijima discloses different resolution data being stored, as discussed in some detail above, is simply incorrect.
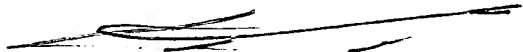
Accordingly, it is respectfully submitted that each of independent claims 1, 15 and 44 patentably distinguish over the applied prior art whether taken individually or in any combination. It is further respectfully submitted that numerous other features further distinguish over the applied prior art, including features recited in the rejected dependent claims.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by

telephone at the below listed local telephone number, in order to expedite resolution of any remaining issues and further to expedite passage of the application to issue, if any further comments, questions or suggestions arise in connection with the application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 01-2135 and please credit any excess fees to such deposit account.

Respectfully submitted,
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CLAIM AMENDMENT APPENDIX
WITH
ADDITIONS UNDERLINED (_) AND DELETIONS BRACKETED ([ ])

Please amend claims 37 and 39 as follows:

37.   (Twice Amended)   [The device of Claim 1, further comprising:] A recording device for capturing data, said recording device, comprising:

at least one memory for storing image data associated with a time period;

a control processor operative to store the data in the at least one memory, wherein each image represented by the stored data associated with a portion of the time period closer to an event has a first image resolution and each image represented by the stored data associated with a portion of the time period further from the event has a second image resolution different than the first resolution; and

a sampler operative to sample data representing each image associated with the portion of the time period closer to the event at a first image sampling rate to generate the image data which represents each image at the first resolution and to sample data representing each image associated with the portion of the time period further from the event at a second image sampling rate to generate the image data which represents each image at the second resolution.

39.   (Twice Amended)   [The method according to claim 15 further comprising the step of:] <u>A method for recording data, comprising</u>:

<u>storing first image data associated with a time period closer to an event, wherein each image represented by the stored first image data has a first image resolution;</u>

<u>storing second image data associated with a time period further from said event, wherein each image represented by the stored second image data has a second image resolution different than the first resolution;</u>

sampling data representing each image associated with the portion of the time period closer to the event at a first image data sampling rate to generate the first image data; and

sampling data representing each image associated with the portion of the time period further from the event at a second image data sampling rate to generate the second image data.